[104] IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

FAO-4619-2014(O&M)
Date of Decision :10.04.2023

New India Assurance Company Limited …Appellant

versus

Poonam Rani and others ….Respondents

Coram : Hon'ble Mr. Justice B.S. Walia

Present : Mr. Vinod Gupta, Advocate for the appellant.
Mr. Sagar Aggarwal, Advocate for respondent No.1 to 4.
None for respondent No.5.

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B.S. Walia, J. (Oral)

[1] Challenge in the appeal by the Insurance Company is to the award of Rs. 7,59,600/- lacs as compensation to respondent-claimant Nos.1 to 4 on account of death of Pardeep Kumar, husband of respondent-claimant No.1, father of respondent-claimant No.2 and son of respondent-claimant Nos.3 & 4 on the ground that the driver of the offending vehicle namely Pardeep Kumar was the borrower of the offending vehicle therefore in terms of the decision of Hon'ble the Supreme Court in '***Ningamma and another****versus****United India Insurance Company Limited***', *2009(3) RCR (Civil) 435* and '***New India Assurance Company Limited****versus****Sadanand Mukhi and others***', *2009 (1) RCR (Civil) 817*, the deceased could not have been treated as third party, therefore, respondents /claimants Nos. 1 to 4 were entitled to compensation only to the extent of liability as stipulated in the insurance policy under thepersonal accident cover i.e. Rs.2 lacs.

[2] Learned counsel for the appellant has referred to the copy of

certificate of insurance, i.e.policy issued to the owner of Vehicle No.HR-07-Q-5456, indicating Rs. 2 lacs as the limit of PA (Personal Accident Cover) under Section III for the owner-driver.

[3] Learned counsel for respondent-claimant Nos.1 to 4 concedes that as per Exhibit R-1 i.e. the certificate of insurance although a package policy was issued yet liability of the Insurance Company under PA cover under Section III for owner-driver is Rs.2 lacs only.

[4] Learned counsel for the appellant by relying on paragraph No.19 of the decision in '***Ningamma and another's****case (supra)* contends that under Section 163-A of the Motor Vehicles Act, if the driver is the owner of the motor vehicle then in that case the owner could not himself be a recipient of compensation as the liability to pay the compensation was on him. Further by relying on paragraph No.24 of the decision in '***Ningamma and another's****case (supra)*, learned counsel contends that in view of the decision of Hon'ble the Supreme Court in ***SadanandMukhi and others***'*case (supra),* the borrower of the vehicle who was driving the vehicle and died in the accident cannot be regarded as third party and neither Section 163-A nor Section 166 of the Motor Vehicles Act would be applicable. Relevant extracts of the decision are reproduced as under:-

'***Ningamma and another****versus****United India Insurance Company Limited***', *2009(3) RCR (Civil) 435:-*

> *"19. We have already extracted Section 163-A of the MVA hereinbefore. A bare perusal of the said provision would make it explicitly clear that persons like the deceased in the present case would step into the shoes of the owner of the vehicle. In a case wherein the victim died or where he was permanently disabled due to an accident arising out of the aforesaid motor vehicle in that event the liability to make payment of the compensation is on the insurance company or*

> *the owner, as the case may be as provided under Section 163-A. But if it is proved that the driver is the owner of the motor vehicle, in that case the owner could not himself be a recipient of compensation as the liability to pay the same is on him. This proposition is absolutely clear on a reading of Section 163-A of the MVA. Accordingly, the legal representatives of the deceased who have stepped into the shoes of the owner of the motor vehicle could not have claimed compensation under Section 163-A of the MVA.*
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> *24. There are indeed cases like New India Assurance Company Limited vs. SadanandMukhi and Others, (2009) 2 SCC 417, wherein, the son of the owner was driving the vehicle, who died in the accident, was not regarded as third party. In the said case the court held that neither Section 163-A nor Section 166 would be applicable. "*

[5] Faced with the aforementioned decision, learned counsel for respondent-claimant Nos.1 to 4 relies upon a decision of a Co-ordinate Bench of this Court in '***New India Assurance Company Limited****versus****Manjit Kaur and others***', *FAO No.4994 of 2014, decided on 16.07.2015*, to contend that in a comprehensive policy where additional payment was made for a driver and where the personal accident of the owner was covered under the policy, the borrower from the owner would also be covered and would therefore be entitled to compensation to the extent the insurance company is liable under the policy. Relevant extract of the decision in ***Manjit Kaur and others***'*case (supra)* is reproduced as under:-

> *" Learned counsel for the appellant has argued that in this case, it is held that the deceased was the borrower of the car. Therefore, as per authority of the Hon'ble Supreme Court in the case of Ningamma and another v. United India Insurance Co. Ltd., 2009(3) RCR (Civil) 435, the insurance*

> *company is not liable to compensate the insured. The perusal of the authority shows that in the said case, it was third party policy and it was held that since owner was not entitled to compensation, therefore, borrower from the owner is also not entitled for compensation. However, the Policy (Ex.R1), shows that it was comprehensive policy and additional payment was made for the driver. Under the policy, the personal accident of the owner was covered. It would follow that the borrower from the owner is also covered. The extent of liability was not mentioned in the policy. Therefore, the liability of insurance company cannot be limited to certain amount. Therefore, finding of the Tribunal in this regard are affirmed."*

[6] Learned counsel for the appellant concedes that he does not oppose the claim of respondent-claimant Nos.1 to 4 for Personal Accident Cover under Section III of the certificate of insurance for owner-driver to the extent of Rs.2 lacs.

[7] In view of the position noted above, the appeal is *allowed.* Award is *modified* and as against Rs. 7,59,600/- awarded by the learned Tribunal, respondent-claimant Nos.1 to 4 are held entitled to compensation of Rs.2 lacs only in terms of Exhibit R-1 i.e. certificate of insurance restricting claim under PA cover under Section III for owner-driver to Rs.2 lacs only.

(B.S. Walia)
Judge

10.04.2023
'Rajneesh'

Whether speaking/ reasoned : Yes/No
Whether reportable : Yes/No